

From: Brian Densmore
To: Microsoft ATR
Date: 1/14/02 10:29am
Subject: Microsoft Settlement

Dear Department of Justice and honorable judiciary,

A peer of mine sent this letter to you. I have previously sent in a letter. But this perhaps goes a little bit further in explaining my thoughts on the matter.

Some of my Information Technology background:

B.S. Computer Science

8 years professional programming employment

20 years computer experience

10 years professional computer/computerized hardware experience

30 years electronic experience (started experimenting age 10)

In other words I have extensive knowledge of things electronic (of which digital computers are but one branch of) from both a hardware and software level.

- > I believe the Microsoft Settlement has been a capitulation by
 - > the current
 - > administration and the Department of Justice to the big money
 - > donations of
 - > the Microsoft lobbying and campaign contributions. The US
 - > won this case!
 - > Why has the justice department settled for this woefully
 - > inadequate solution
 - > to Microsoft's conviction as a monopolist? This is the
 - > penalty phase of this
 - > case, and yet there appears to be no penalty for Microsoft,
 - > and in fact if
 - > implemented as written, could actually increase Microsoft's Monopoly.
- Exactly! Microsoft has already been found guilty. While I can understand the DOJ backing off the separation of Microsoft, that doesn't mean they don't need to be reined in and made to behave like a good Monopolist. It has been apparent for some time Microsoft has flaunted the law in many aspects. They have taken other peoples copyrighted and or patented software and changed the copyright or patent information and sold it as their own (just one example: STAC software's stacker compression software). This kind of lack of morals needs punishment. They just keep doing this over and over, and getting away with this! this is a travesty and a mockery of the American legal system. Don't let Microsoft manipulate the law to fit them; manipulate Microsoft to fit the law.
- >
 - > For true justice to be served, the courts must decide the
 - > punishment and not

> the politically (and monetarily) motivated DOJ. For this reason, the
> settlement as currently written must be REJECTED!
>
> I would like to point out several flaws in the settlement and
> recommend some
> alternatives that would seem to make more sense. I refer to
> the settlement
> found at <http://www.usdoj.gov/atr/cases/f9400/9495.htm>
>
> III.A Microsoft shall not retaliate against an OEM...
>
> Not only should Microsoft not be able to punish the OEM, but
> OEM pricing
> should be disallowed for Microsoft. The OEM vendors should
> be required to
> pay full retail price for the operating system and office
> products, and pass
> this on to the consumer. In other words, strike paragraphs
> III.B.2 and
> III.B.3 from the settlement. Furthermore, the OEM should be
> required to list
> this cost as part of total cost of the machine, and offer all
> machines they
> sell with either alternative operating systems, or no
> operating system at all
> installed. This would provide clear disclosure to consumers of the
> "Microsoft tax" they are paying with each new computer
> system. Allowing
> users to remove items from a purchased machine is inadequate,
> as they have
> already paid the "tax" and Microsoft goes unpunished.
>
> III.D ...Microsoft shall disclose to ISVs, IHVs, IAPs, ICPs,
> and OEMs, ...the
> APIs and related Documentation...
>
> While this is a step in the right direction, Microsoft should
> be compelled to
> make public, not simply to certain companies but to the
> public, all operating
> system APIs, all communication APIs, and every single file
> format, current
> and future, created or used by any of their products. The
> interfaces and
> file formats should not be allowed to be considered
> "intellectual property"
> that would allow Microsoft to restrict access by imposing
> "royalties or other
> payment of monetary consideration" simply to interface with

- > their products.
- > This will promote true competition by allowing other
- > companies and the open
- > source community to write programs that can be fully
- > compatible with, and
- > have equivalent functionality to the Microsoft monopoly products.

APIs (Application Programming Interfaces) are exactly that. They are an interface; a way of communicating between two closed systems. If Microsoft hides the APIs, then only Microsoft can communicate with that system. Microsoft does disclose a number of APIs, but not the ones they use "internally"; which allows them to "integrate" certain things (like Explorer) into the OS. No one else can use these APIs without reverse engineering them, because they are hidden from the public.

- >
- > II.J - No provision of this Final Judgment shall:
- > 1. Require Microsoft to document, disclose or license to
- > third parties...
- > 2. Prevent Microsoft from conditioning any license...
- >
- > This paragraph reads like a major legal loophole for
- > Microsoft that will
- > allow them to get away with keeping large parts of the
- > interface to their
- > systems a secret by saying that the disclosure would "compromise the
- > security" of that system. The APIs and file formats I
- > mentioned above should
- > be excluded from this paragraph.
- >
- > Section V. Termination
- > B. In any enforcement proceeding in which the Court has found that
- > Microsoft has engaged in a pattern of willful and systematic
- > violations, the
- > Plaintiffs may apply to the Court for a one-time extension of
- > this Final
- > Judgment of up to two years, together with such other relief
- > as the Court may
- > deem appropriate.
- >
- > So if I have interpreted this paragraph correctly, if
- > Microsoft fails to
- > comply with this settlement in the first five years, their
- > punishment is to
- > spend two more years not complying!? How is this an
- > incentive for Microsoft
- > to comply with the settlement? This section completely
- > removes what few
- > teeth this settlement ever had. This section should be
- > completely rewritten

> such that if Microsoft fails to comply with the settlement,
> any and all
> intellectual property not in compliance will be forfeited to
> the public
> domain. That would be an incentive for compliance!
>
> In summary, the Microsoft punishment for being a convicted
> monopolist should
> include the opening and documenting of all Application
> Programming Interfaces
> for their products, the documented specification of all file
> formats for
> documents created by their products should be public domain,
> and the complete
> prohibition of the discounts and "bundling" Microsoft
> currently engages in
> with hardware vendors. Additionally, the legal loopholes
> should be removed,
> and the penalty for non-compliance should be severe.
>
> A settlement that truly encourages competition is very much
> in the national
> interest and national security. A study released a year ago
> by the highly
> respected Center for Strategic and International Studies,
> pointed out that
> the use of Microsoft software actually poses a national
> security risk. We
> can not allow any one company to maintain a strangle hold on
> something as
> important to this nation as the information technology
> infrastructure of this
> country. It is very important for the future of this nation
> that a careful
> and deliberate penalty that restores true competition to the software
> marketplace be implemented.
>
> Thanks you for your time,
> Jim Herrmann
> Kansas City, Kansas
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>
> KC Linux Users Group -- to unsubscribe send mail to
> majordomo@kclug.org
> Enter without the quotes in body of message "unsubscribe kclug"
>
Thank you,

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